In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-332

JOSEPH H. UHRIG, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

1. After a jury-waived trial in the United States District Court for the Northern District of Illinois, petitioner was convicted on eight counts of mail fraud, in violation of 18 U.S.C. 1341.[1] On January 23, 1969, he was sentenced to imprisonment for eighteen months on each count, the sentences to run concurrently. The court of appeals affirmed on May 24, 1971 (Pet. App.). The instant petition was filed on June 24, 1971, and is out of time under Rule 22(2) of the Rules of this Court. In

[1] Petitioner was originally indicted on nine counts of mail fraud. However, one count was dismissed on motion of the government during the trial (R. 79). Robert Price, indicted with petitioner, was severed prior to trial. All charges against him were subsequently dismissed (R. 18, 91).

any event, the petition presents no question warranting review by this Court.

Petitioner, who does not contest the sufficiency of the evidence summarized in the opinion below (Pet. A1-A5), claims that he failed knowingly and intelligently to waive his right to counsel and that consequently, when it became apparent that he could not adequately defend himself, the trial judge should have *sua sponte* appointed counsel for him or, alternatively, terminated the trial.

On January 18 and 19, 1968, pretrial hearings were held on petitioner's motion to appear *pro se*.[2] Petitioner's counsel was present throughout these proceedings. The district judge explained the need for a lawyer, if only for his knowledge of the technical rules of evidence, and warned petitioner that the court itself could not act as his attorney (I H. 4). The judge tried to dis- by petitioner that "this is a decision that I would like to courage petitioner from appearing *pro se*, but was told stand by" (II H. 3). Despite further offers by the court to have counsel appointed to represent him or at least advise him at trial, petitioner insisted on his right to defend himself (II H. 4–5). Petitioner acknowledged his understanding of the charges and waived reading of the indictment (I H. 6). The judge then informed him of the maximum possible sentence and fine to which he

[2] The transcript of the proceedings held on January 18 (I H.) and January 19 (II H.) are found in a single volume presently on file with the Clerk of this Court. The five-volume trial transcript was certified by the court of appeals for filing in this Court but volume IV is missing.

was subject, and again urged petitioner to reconsider. Petitioner refused (II H. 10–11). Throughout the subsequent trial, the court carefully explained to petitioner various procedures, such as the reason for the exclusion of prospective witnesses or the purpose of opening arguments (*e.g.*, Tr. 5–9, 798). He counseled petitioner on the manner of refuting testimony (*e.g.*, Tr. 37, 48–49) and allowed him wide latitude in the use of evidence (*e.g.*, Tr. 45, 296). The trial judge even pointed out to petitioner that he could object to the admission of certain testimony elicited by the prosecution (Tr. 218).

2. The record reflects a consistent effort by the trial judge to safeguard petitioner in the assertion of his right to represent himself. When it became obvious, despite the many warnings of the court, that petitioner—noted by the court of appeals to be a "highly articulate and persuasive" man (Pet. App. A1)—would cling to his decision, the judge made certain that he understood the nature of the charge as well as the possible penalties which could be imposed. Petitioner was thus well aware of the burdens and potential consequences of proceeding *pro se* and exercised his choice with informed intelligence and understanding. *Adams* v. *United States ex rel. McCann*, 317 U.S. 269; *Johnson* v. *Zerbst*, 304 U.S. 458; *Hodge* v. *United States*, 414 F. 2d 1040 (C.A. 9). In these circumstances, the trial judge had no choice but to proceed with the trial. *Lowe* v. *United States*, 418 F. 2d 100 (C.A. 7), certiorari denied, 397 U.S. 1048. And once the trial was in progress, the trial judge showed great

patience and afforded petitioner every opportunity to present his evidence effectively (Pet. App. A6). The trial judge was required to do no more.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1971.

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